City of Lafayette Staff Report

For:	City Council
By:	Michael P. Cass, Planning Technician
Date Written:	February 26, 2008
Meeting Date:	March 10, 2008
Subject:	Agreement for Installation and Maintenance of Existing and New Landscaping between Mark and Laura Nathan and the City of Lafayette, located at 766 Las Trampas Road, APN 234-240-022.

Introduction
The attached Agreement for Installation and Maintenance of Existing and New Landscaping between Mark and Laura Nathan and the City of Lafayette was a condition of approval for HDP93-05. The attached agreement meets the requirement for approval.

Fiscal Impact
None

Recommendation
Accept Agreement for Installation and Maintenance of Existing and New Landscaping and authorize the City Clerk to accept and record.

Attachment(s)
A. Agreement for Installation and Maintenance of Existing and New Landscaping

Record at the request of City of Lafayette
Return to:
City of Lafayette
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF EXISTING AND NEW LANDSCAPING

THIS AGREEMENT is made this _____ day of _____, _____, between Mark and Laura Nathan hereafter referred to as "Property Owner," and the CITY OF LAFAYETTE, a Municipal Corporation, hereafter referred to as "City."

RECITALS

THIS AGREEMENT is based upon the following facts:

1. Property Owner is the owner of real property in the City of Lafayette, 766 Las Trampas, (Assessor's Parcel Number 234-240-022) described in Exhibit "A" attached to this Agreement and made a part of it by this reference;

2. On March 2, 2006, the City granted a Hillside Development Permit to the Property Owner in accordance with the zoning ordinance of the City of Lafayette.

3. By the terms of the Hillside Development Permit, the Property Owner is required to install and maintain landscaping in accordance with a plan approved by the City on March 2, 2006, a copy of which is on file in the City Office to which reference is made for further particulars;

4. Both parties recognize that the installation and maintenance of landscaping is an integral part of the Property Owner's plan for development of the property, and is necessary to carry out the purpose and intent of the City's Land Use regulations, and that the development would not have been approved by City without the assurance that this Agreement would be executed by Property Owner.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, as follows:

1. PURPOSE. The purpose of this Agreement is to assure (a) installation of the landscaping in accordance with landscape plan previously approved by the City and (b) continued maintenance and care of the existing landscaping.

2. PROPERTY SUBJECT TO AGREEMENT. The property which is the subject of this Agreement is described in Exhibit "A" which is attached to this Agreement and incorporated in it by this reference.
3. CITY PROCEEDINGS. Reference is made to the Zoning Administrator proceedings conducted by the City (Planning File No. HDP93-05) and the landscaping plan for the property, a copy of which is on file in the City Offices.

4. LANDSCAPING AS A BENEFIT. Property Owner agrees that the landscaping which he/she is obligated to provide will materially benefit his/her property and is necessary to comply with the condition(s) imposed by the City as a requirement of the development of the property.

5. DUTY TO INSTALL AND MAINTAIN LANDSCAPING. Property Owner agrees to complete the installation of the approved landscaping prior to final building inspection approval, and diligently to maintain and care for the landscaping which he/she installs, using generally accepted methods of cultivation and watering. Property Owner shall maintain that standard care necessary to prevent the landscaping from deteriorating to the extent that its value as landscaping is destroyed.

6. CITY MAY MAINTAIN LANDSCAPING. Property Owner agrees that if he/she fails to meet the standard of maintenance necessary to keep the landscaping in a healthy condition, the City will give written notice of the deficiency to the owner who shall have 20 days to make the necessary correction, and if the correction is not made within 20 days the City may elect to take the steps necessary to assure that the landscaping is maintained and cared for. To do this, the City shall service a notice of its intent to enter the premises for this purpose. The City shall either personally serve the notice upon the Property Owner or mail a copy of it by Certified Mail at the Property Owner's last known address, or as shown on the tax rolls at least 15 days in advance of the date when it intends to enter the premises. For this purpose, the City may enter upon the property and perform such work as it considers reasonably necessary and proper to restore and maintain the landscaping. The City may act either through its own employees or through an independent contractor.

7. CITY'S COSTS OF MAINTENANCE A LIEN. If the City incurs costs in restoring or maintaining the landscaping after following the procedure set forth in Paragraph 6 above, the City shall make demand on the Property Owner for payment, if the Property Owner fails to pay the costs incurred by the City within 30 days of the date demand was made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 7 percent a year until paid.

8. ADDITIONAL REMEDIES. The City may as an alternative to the lien procedure set forth above in Paragraph 7, bring legal action to collect the sums due as the result of making of expenditures for restoration and maintenance of the landscaping. The Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, the Property Owner agrees to pay the City a reasonable sum as attorney's fees and court costs, together with interest from the date which is 30 days after the City has given its notice, under Paragraph 6 above.

9. NOTICES. Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed to the Planning Services Manager, City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA 94549. Notices to the Property Owner shall be addressed to him/her at the following address:

Mark Nathan
Laura Nathan
766 Las Trampas Road
Lafayette, CA 94549

When Property Owner ceases to be the owner, he/she may file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so, the subsequent Grantee is charged with the obligation under this Agreement.

10. MISCELLANEOUS TERMS AND PROVISIONS:
   (a) If any provision of this contract is adjusted invalid, the remaining provisions of it are not affected.
   (b) Notice to Property Owner shall be considered to have been given to him/her when sent to his/her address above stated.
   (c) This writing contains a full, final and exclusive statement of the contract of the parties.
   (d) Property Owner appoints the City as his/her Attorney-in-fact, to do all acts and things which the City considers necessary to restore or maintain the landscaping approved under the Zoning Administrator proceedings.
   (e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
   (f) The obligations upon the owner signing this Agreement terminates personally as to him/her when he/she conveys his/her interest in the property and files for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner(s) takes title subject to the requirements of this agreement.

11. AGREEMENT ATTACHES TO LAND. This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

12. CITY MAY REQUIRE ADDITIONAL SECURITY. If upon execution of this Agreement or during the course of performance the City considers that it is necessary to have the Property Owner post additional security to guarantee the performance of his/her obligations, the City may require the Property Owner to post additional security. The City may require either a cash deposit or a surety bond guaranteeing performance, signed by sureties, and in a form deemed satisfactory to the City. The condition of the security shall be that if the Property Owner fails to perform his/her obligations under this Agreement, the City may in the case of a surety bond require the sureties to perform the obligations of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETE:

_____

Mayor, City of Lafayette

ATTEST:

_____

City Clerk

PROPERTY OWNER(S):

Mark Nathan

Mark Nathan, Property Owner

Laura Nathan

Laura Nathan, Property Owner

NOTE: Property Owner's signature(s) must be notarized on a separate notary sheet. Signatures must match letter-for-letter with printed name on this agreement.

ATTACHMENTS: Exhibit "A" Legal Description

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Contra Costa }

On February 25, 2008 (Date) before me, Brenda Moreno, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Mark Nathan and Laura Nathan — (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature B Moreno (Signature of Notary Public)

BRENDA MORENO
Commission # 1667773
Notary Public - California
Contra Costa County
My Comm. Expires Jun 13, 2010

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement for Installation & Maintenance of Existing and New Landscaping

Document Date: — Number of Pages: 5

Signer(s) Other Than Named Above: —

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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EXHIBIT "A"

The land referred to herein is in the State of California, County of Contra Costa, City of LAFAYETTE, and is described as follows:

PARCEL ONE:

A portion of Parcels One and Two, as described In the Deed to Walter Dankas and Mary D. Dankas, filed August 23, 1963, in Book 4436 of Official Records, at Page 620, Contra Costa County Records, and being more particularly described as follows:

Beginning at the most western corner of said Dankas Parcel One (4436 OR 620); thence leaving said point of beginning and said western corner northerly along the west line of said Parcel north 24° 54' 00" east, 173.96 feet; thence leaving said west line southeasterly along-the "new lot line" south 59° 26' 30" east, 220.00 feet to a point on the east line of the aforesaid Dankas Parcel Two (4436 OR 620); thence southerly along said east line south 24° 54' 00" west, 173.96 feet to the most southern corner of said Dankas Parcel Two (4436 OR 620); thence northwesterly along the south line of said Dankas Parcels One and two (4436 OR 620) north 59° 26' 30" east, 220.00 feet to the point of beginning.

PARCEL TWO:

"A right of way (not to be exclusive)" created in reference to Parcel One above in the Deed to Mola Smith, recorded July 5, 1946, Book 843, Official Records, Page 221 "for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with the necessary poles or conduits" over the north 20 feet, right angle measurements, of the parcel of land described as Parcel One in said Deed to Smith, 843 OR 221.

PARCEL THREE:

"A right of way (not to be exclusive)" created in reference to Parcel One above in the Deed to John Perrelli, et ux, recorded March 24, 1945, Book 815, Official Records, Page 476, "for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with the necessary poles or conduits" over the north 20 feet of the parcel of land described as Parcel One in said Deed to Perrelli, 815 OR 476.

PARCEL FOUR:

"A right of way (not to be exclusive)", created in reference to Parcel One above in the Deed to John Perrelli, et ux, recorded March 11, 1946, Book 896, Official Records, Page 207, "for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with the necessary poles or conduits" over the north 20 feet, right angle measurements, of the parcel of land described as Parcel One in said Deed to Perrelli, 896 OR 207.

PARCEL FIVE:

"A right of way (not to be exclusive)" created in reference to Parcel One above in the Deed to Norman Morrill, et ux, recorded October 7, 1958, Book 3241, Official Records, Page 135, "for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with the necessary poles or conduits over a strip of land described as follows:

Beginning on the south line of a 40 foot in width private road known as Curran Road, et the west line of the parcel of iand described in the Deed from Gussie E. Curran Botelho to Weno-na H. Burns, et vir, dated April 8, 1937 and recorded April 9, 1937 in Volume 438 of Official Records, at Page 336; thence from said point of beginning along the south line of said 40 feet in width private road known as Curran Road, as follows: south 87° 25' east, 19.87 feet; easterly along the arc of a curve to the left, with a radius of 520 feet, tangent to the last course, an arc distance of 70.19 feet; north 84° 51' east, 42.99 feet and easterly along the arc of a curve to the right, with a radius of 180 feet, tangent to the last course, an arc

distance of 51.98 feet to the south line of the County Road known as Las Trampas Road, as described in the deed from James M. Curran, et al, to Contra Costa County, dated January 23, 1953 and recorded April 7, 1953 in Volume 2099 of Official Records at Page 386; thence along the exterior lines of said County Road (2099 OR 336) north 78° 36' 15" west, 69.94 feet and north 11° 23' 45" east, to the south line of the parcel of land described as Parcel One in the Deed from Gussie E. Botelho to Lee C. Daviess, et ux, dated March 7, 1952 and recorded March 14, 1952 in Volume 1905 of Official Records, at Page 59; thence westerly along said south line to the west line of said Burns parcel (438 OR 336); thence south 10° 24' east along said west line to the point of beginning."

PARCEL SIX:

"A right of way (not to be exclusive)" created in reference to Parcel One above in the Deed to Lee C. Daviess, et ux, recorded March 14, 1952, Book 1905, Official Records, Page 59, "for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with the necessary poles or conduits" over a strip of land described as follows:

Beginning in the center line of a 40 foot in width private road known as Curran Road, at the southwest corner of the parcel of land described as Parcel One in said Deed to Daviess, 1905 OR 59; thence from said point of beginning north 2° 35' east along the west line of said Daviess parcel, 1905 OR 59, 20 feet; thence south 87° 25' east, 147.03 feet; thence easterly along the arc of a curve to the left with a radius of 480 feet, tangent to the last course, an arc distance of 64.79 feet; thence north 84° 51' east, tangent to the last curve, 13.49 feet; thence northeasterly and northwesterly along the arc of a curve to the left, with a radius of 20 feet, tangent to the last course, an arc distance of 38.86 feet to the southwest line of the County Road known as Las Trampas Road, as described in the Deed to Contra Costa County, recorded April 7, 1953, Book 2099, Official Records, Page 336; thence along the exterior lines of said Contra Costa County parcel, 2099 OR 336, south 26° 28' 30" east, 17.88 feet and south 11° 23' 45" west, to the south line of said Daviess parcel, 1905 OR 59; thence westerly along said south line to the point of beginning.

PARCEL SEVEN:

"A right of way (not to be exclusive)" created in reference to Parcel One above in the Deed to Alex Miller, et ux, recorded February 25, 1960, Book 3563, Official Records, Page 215, "for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with the necessary poles or conduits over a portion of Lots 14 and 15, as designated on the Map entitled 'Map of Sectionization of a Part of Rancho Laguna De Los Palos Colorados, Contra Costa County, California', which Map was filed in the office of the Recorder of the County of Contra Costa, State of California, on August 8, 1916 in Volume 15 of Maps, at Page 308, being a strip of land 20 feet in width, the south line of which is described as follows:

Beginning on the north line of the parcel of land described as Parcel One in the Deed from Gussie E. Botelho to Mola Smith, dated January 10, 1946 and recorded July 5, 1946 in Volume 843 of Official Records, at Page 221, at the most southerly corner of Parcel One above; thence from said point of beginning south 59° 26' 30" east, along the north line of said Smith parcel (843 OR 221), 14.89 feet to the northwest corner of the parcel of land described as Parcel One in the Deed from Gussie E. Botelho to John Perrelli, et ux, dated November 25, 1944 and recorded March 24, 1945 in Volume 815 of Official Records, at Page 476; thence along the north line of said Perrilli parcel (815 OR 476) easterly along the arc of a curve to the left, with a radius of 400 feet, tangent to the last course, an arc distance of 195.31 feet and south 87° 25' east, tangent to the last curve, 175 feet to the west line of the parcel of land described as Parcel One in the Deed from Gussie E. Botelho to Lee C. Daviess, et ux, dated March 7, 1952 and recorded March 14, 1952 in Volume 1905 of Official Records, at Page 59."

EXCEPTING FROM PARCEL SEVEN:

That portion thereof lying within the parcel of land described as Parcel One in the Deed to Thorvald Jacobsen, et ux, recorded October 8, 1958 Book 3241, Official Records, Page 151.

PARCEL EIGHT:

"An easement (not to be exclusive)" created in reference to Parcel One above in the Deed to Thorvald Jacobsen, et ux, recorded October 8, 1958, Book 3241, Official Records, Page 151 "for use as a roadway for vehicles of all kinds, pedestrians and animals, and as a right of way for water, gas, oil and sewer pipe lines and for telephone, electric light and power lines, together with the necessary poles or underground conduits to carry said lines" over the south 20 feet of the parcel of land described as Parcel One in said Deed to Jacobsen, 3241 OR 151.

A.P.N. 234-240-022